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TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule LSA Document #05-213

DIGEST

Amends 312 IAC 18-3-12, which governs standards for the control of the larger pine shoot beetle, by adding Dearborn County to the state quarantine area. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

The proposed rule would not impose requirements or costs under IC 4-22-2-24(d)(3). The proposal would make permanent a temporary rule (LSA Document #05-148(E)) that adds Dearborn County to the Indiana state quarantine of the larger pine shoot beetle (*Tomicus piniperda*). The U.S. Department of Agriculture, through the Animal and Plant Health Inspection Service (APHIS), issued a memorandum on June 1, 2005. The APHIS memorandum provides for the interim designation of Dearborn County as a quarantined area for the pine shoot beetle, pending publication of an amended federal regulation at 7 CFR 301.50 to make the quarantine permanent. According to 7 CFR 301.50-2(a), "less than an entire state will be designated as a quarantined area only if" the state adopts and enforces a quarantine and rule that impose restrictions on the intrastate movement of the species equivalent to the federal regulation. If Indiana fails to make permanent the current emergency quarantine of the larger pine shoot beetle in Dearborn County, the entire state of Indiana would become subject to a federal quarantine by the U.S. Department of Agriculture. A failure to adopt the proposed rule would impose requirements or costs on small businesses for Indiana counties not already subject to a federal or state quarantine.

312 IAC 18-3-12

SECTION 1. 312 IAC 18-3-12, AS AMENDED AT 28 IR 2951, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 18-3-12 Control of larger pine shoot beetles

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 12. (a) The larger pine shoot beetle (*Tomicus piniperda*) is a pest or pathogen. This section governs standards for the control of the larger pine shoot beetle in Indiana.

(b) Except as provided in subsection (c), the division has determined Indiana is an infested area where the larger pine shoot beetle is present.

(c) Exempted from subsection (b) are the following counties:

- (1) Clark.
- (2) Clay.
- (3) Crawford.
- (4) Daviess.
- ~~(5) Dearborn.~~
- ~~(6)~~ (5) Dubois.
- ~~(7)~~ (6) Floyd.
- ~~(8)~~ (7) Gibson.
- ~~(9)~~ (8) Greene.
- ~~(10)~~ (9) Harrison.
- ~~(11)~~ (10) Jackson.
- ~~(12)~~ (11) Jefferson.
- ~~(13)~~ (12) Knox.

- (14) (13) Lawrence.
- (15) (14) Martin.
- (16) (15) Ohio.
- (17) (16) Orange.
- (18) (17) Perry.
- (19) (18) Pike.
- (20) (19) Posey.
- (21) (20) Scott.
- (22) (21) Spencer.
- (23) (22) Sullivan.
- (24) (23) Switzerland.
- (25) (24) Vanderburgh.
- (26) (25) Warrick.
- (27) (26) Washington.

(d) The following items are regulated articles:

- (1) The larger pine shoot beetle in any life stage.
- (2) Entire plants or parts of the genus pine (*Pinus* spp.). Exempted from this subdivision are plants that conform to each of the following:
 - (A) Are less than thirty-six (36) inches high.
 - (B) Are one (1) inch in basal diameter or less.
- (3) Logs and lumber of pine with bark attached. Exempted from this subdivision are logs of pine and pine lumber with bark attached if:
 - (A) the source tree was felled during the period of July through October; and
 - (B) the logs and lumber are shipped from the quarantined area during the period of July through October.
- (4) Any other article, product, or means of conveyance if determined by the division director to present the risk of spread of the larger pine shoot beetle.

(e) The following actions are ordered within the infested area:

- (1) The movement by a person of a regulated article to a destination outside the infested area is prohibited, except under the following conditions:
 - (A) A thorough examination of all nursery stock takes place on a piece by piece basis.
 - (B) A statistically based examination of Christmas trees is made according to the following schedules:

TABLE 1. PAINTED (COLOR-ENHANCED)
PINE CHRISTMAS TREES¹

No. of Trees in Shipment	No. of Trees to Sample	No. of Trees in Shipment	No. of Trees to Sample
1 – 72	All	700 – 800	120
73 – 100	73	801 – 900	121
101 – 200	96	901 – 1,000	122
201 – 300	106	1,001 – 2,000	126
301 – 400	111	2,001 – 3,000	127
401 – 500	115	3,001 – 5,000	128
501 – 600	117	5,001 – 10,000	129
601 – 700	119	10,001 or more	130

¹If a pine shoot beetle is detected in any one (1) of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, “All trees that remain unsold as of December 25 must be destroyed by burning or chipping or must be fumigated prior to January 1.”.

TABLE 2. NATURAL (UNPAINTED)
CHRISTMAS TREES¹

No. of Trees in Shipment	No. of Trees to Sample	No. of Trees in Shipment	No. of Trees to Sample
1 – 57	All	501 – 600	80

58 – 100	58	601 – 700	81
101 – 200	69	701 – 1,000	82
201 – 300	75	1,001 – 3,000	84
301 – 400	77	3,001 – 10,000	85
401 – 500	79	10,001 or more	86

¹If a pine shoot beetle is detected in any one (1) of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, “All trees that remain unsold as of December 25 must be destroyed by burning or chipping or must be fumigated prior to January 1.”

(C) Following the examination, a determination is made that no life stages of the larger pine shoot beetle are present. The determination must be accompanied by either of the following:

(i) A certificate of inspection approved by the division.

(ii) A certificate or similar authorization issued by the U.S. Department of Agriculture under a parallel federal quarantine.

(D) The certificate for the absence of the larger pine shoot beetle must be attached to and remain on the regulated articles until the articles reach their destinations. This requirement is, however, satisfied if the certificate is attached to the shipping document and the regulated article is adequately described on the shipping document of the certificate.

(2) A regulated article originating outside the infested area may move through the infested area without a certificate of inspection if the point of origin of the regulated article is indicated on the waybill or shipping documents and transportation conforms with this subdivision. Passage through the infested area must be made without stopping, except for refueling or traffic conditions, and shall be conducted within either of the following conditions:

(A) The ambient temperature is below fifty (50) degrees Fahrenheit.

(B) The regulated article is carried in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle. Examples of an adequate covering include canvas, plastic, or loosely woven cloth.

(3) A regulated article originating outside the infested area that is moved into the infested area and exposed to potential infestation by the larger pine shoot beetle is considered to have originated from the infested area. Any regulated article under this subdivision is controlled by subdivision (1).

(4) The movement of a regulated article from an infested area through any noninfested area to another infested area is prohibited without a certificate for the absence of the larger pine shoot beetle except where both of the following conditions are met:

(A) Passage through a noninfested area is made without stopping, except for refueling or traffic conditions, if the ambient temperature is below fifty (50) degrees Fahrenheit or if in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle.

(B) The waybill or shipping documents accompanying any shipment of regulated articles within or through Indiana indicate the county and state of origin of the regulated articles.

(5) Any regulated article imported or moved within Indiana in violation of this section shall be immediately removed from any noninfested area or destroyed. The expense of compliance with this subdivision is the joint and several responsibility of any person possessing or owning the regulated article. Compliance with this subsection shall be performed under the direction of the division director.

(6) In addition to the penalty set forth in subdivision (5), a person who violates this section is subject to any administrative, civil, or criminal sanction set forth in IC 14-24 and this article.

(7) This section does not preclude the division director from issuing any permit under section 3 of this rule.

(Natural Resources Commission; 312 IAC 18-3-12; filed Nov 22, 1996, 3:00 p.m.: 20 IR 950; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1273; filed Feb 9, 1999, 4:16 p.m.: 22 IR 1945; filed Apr 4, 2001, 3:02 p.m.: 24 IR 2404; filed May 16, 2002, 12:28 p.m.: 25 IR 3049; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 19, 2003, 8:50 a.m.: 26 IR 3313; filed May 25, 2005, 10:30 a.m.: 28 IR 2951)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 30, 2005 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on a proposed amendment to 312 IAC 18-3-12, which governs standards for the control of the larger pine shoot beetle, by adding Dearborn County to the state quarantine area.

The proposed rule would not impose requirements or costs under IC 4-22-2-24(d)(3).

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission